

## REMARKS

Claim 27 is cancelled. Claims 8, 15 and 16 are amended. Claims 1-7 and 28-59 were previously withdrawn. Upon entry of the amendment, claims 8-26 are pending the present application.

### Claim Rejections under 35 USC §112

Claim 8 as amended recites:

A method for obtaining an isolate or culture of a dinoflagellate having a purity X, said method comprising selecting one or more dinoflagellate cells from a sample, placing said dinoflagellate cell or cells in a growth medium containing mimosine or a toxic degradative product thereof, culturing the mixture thus obtained in an incubator until cell multiplication of the dinoflagellate is evident thereby obtaining an enriched culture and, if necessary, transferring the enriched culture to fresh medium containing mimosine or a toxic degradative product thereof and repeating the sub-culturing of said enriched culture, until an isolate or culture of the purity X of the dinoflagellate is obtained.

Applicant respectfully disagrees with the Examiner's conclusion that claim 8 is confusing because the method used for selecting is not disclosed with any particularity and respectfully directs the Examiner's attention to page 8, lines 18 and 19 of the present application. The cited portion of the specification outlines specific directions for selecting one or more dinoflagellate cells from a sample by stating that the selection of one or more dinoflagellate cells from a sample is "typically [done] with the aid of a microscope and a micropipette." Applicant submits that the specification contains sufficient directions so as to enable even those of minimal skill in the art, such as students, to practice the invention.

The terms "desired" and "required" have been deleted from claim 8 and, as amended, claim 8 now recites "required purity." It is believed that the amended claim is sufficiently clear and that the skilled artisan would understand that the purity of the isolate or culture of dinoflagellate required is dependent upon the particular purpose the

artisan intends to pursue. Moreover, the skilled artisan can be expected to know that the final sub-culturing step is repeated until the required purity X is obtained.

In response to the Examiner's conclusion that claim 8 was unclear as to how the culture is enriched and to what degree, claim 8 is amended to clarify that the enriched culture is obtained by incubating the culture until cell multiplication is evident.

As amended, claim 15 recites:

The method of claim 8, wherein culturing the mixture in an incubator until cell multiplication of the dinoflagellate is evident takes from 3 to 10 days.

As amended, claim 16 recites:

The method of claim 8, wherein culturing the mixture in an incubator until cell multiplication of the dinoflagellate is evident takes from 4 to 7 days.

Applicant submits that amending claims 8, 15 and 16 to recite 'culturing ... in an incubator' provides sufficient antecedent basis and places claims 15 and 16 in proper dependent form.

Applicant further submits that the amendments to claims 8, 15 and 16, as outlined above, obviate all §112 rejections properly raised by the Examiner.

### **Claim Rejections under 35 USC §102**

In response to the Examiner's rejection of claims 8-27 in light of the Yeung *et al* publication, Applicant respectfully calls the Examiner's attention to the filing date of the present application, which is September 30, 2003. The Yeung *et al* reference was published October, 2002, which is less than one year prior to the filing date of the present application. Although the paper was submitted for review and accepted in December 2001 and March 2002 respectively, the undersigned has been informed that no copy of the paper was available to the public until October, 2002. Therefore the Yeung *et al* reference is not prior art under §102(b). Similarly, the Yeung *et al* is not

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prior art under §102(a) since the inventors of the present application are the same as the authors of the reference.


Applicant submits that the Examiner's §102 rejection of claim 27 is obviated by the cancellation of claim 27.

**For all the foregoing reasons**, allowance of all pending claims is respectfully requested.

The Examiner is invited and encouraged to telephone Applicant's attorney to schedule an interview if it is deemed that a telephone conversation will hasten prosecution of this application.

Respectfully submitted,

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